REMARKS

Claims 1, 3-6, and 8-11 are currently pending within this application. NO Claims have been amended, added, or canceled with this response.

The Office has rejected Claims 1, 4, 5, 6, and 8-10 under 35 U.S.C. § 102(e) as being anticipated by Withiam I. The Office has also rejected Claims 1, 4, 5, 6, and 8-11 under the same statute as being anticipated by Withiam II. Applicants have chosen to respond to these rejections simultaneously as they rely upon essentially the same teachings and the same improper bases. Importantly, Applicants note that the presently claimed invention requires a specific type of metal oxide silicate exhibiting a mole ratio of calcium, magnesium, and/or zinc to silicate of at least 1 (and thus could have an excess of such metals to silicate). This specific claim limitation has never been taught nor fairly suggested within the industry, let alone within the presently cited prior art. Both Withiam I and II references disclose a calcium silicate having a certain range of oil absorptions, but only exemplifies a single type, Hubersorb 600 (I: col. 12, Table VII; II: Table II and paragraph 0043, as some examples). This, being the only embodiment disclosed therein for the calcium silicate materials potentially useful in this formulations of these two references is thus the proper product to be compared with those now claimed. To that end, Applicants have already provided such a comparison within the originally filed specification (see page 20, Table 5, at least). Such a Hubersorb 600 product exhibits a 0.5:1 mole ratio of calcium oxide to silicate; the inventive examples are clearly at least 1:1 mole ratios in actuality. The majority of the inventive materials exhibit improved odor capacity, both high and low temperature in nature over this prior art calcium silicate. As such, Applicants have properly shown that the prior art teachings are not

the same as those presently claimed. Anticipation cannot lie where there is lacking an actual teaching or plausible argument for inherency. As the exemplified materials of the Withiam I and II references clearly do not meet the current claim limitations, and nothing further within the four corners of these documents point to a material that potentially does meet such claim limitations otherwise, it is respectfully submitted that such cited references simply do not teach the same limitations as now required of the currently claimed invention. Reconsideration and withdrawal of both of these improper rejections are thus earnestly solicited.

The Office has also rejected Claims 1, 3, 4, 5, 6, and 8-11 under 35 U.S.C. §103(a) as being unpatentable over Klein in view of Withiam III. Klein is deficient for the reasons expressed by the Office already. Nothing further is provided in this reference as to the type of calcium silicate present. Different variations on calcium silicate have been utilized within different industries, including crystalline wollastonite and amorphous Hubersorb 600, both discussed and compared within the originally filed specification to the specific types of calcium, magnesium, and/or zinc oxide silicates now claimed. The Office thus relied upon Withiam III as a teaching of a calcium silicate product that would meet the present claim limitations. However, such a reliance was clearly misplaced. Withiam III is directed to a metal oxide-aluminosilicate, not a calcium, magnesium, and/or zinc oxide silicate. The only possible teaching of a non-aluminosilicate material is in reference Example 3 which shows a calcium silicate exhibiting the same 0.5:1 mole ratio as Hubersorb 600. There is no other teaching or discussion anywhere within this reference that would provide support for the utilization of any type of metal silicate other than a metal aluminosilicate (or a 0.5:1 mole ratio calcium silicate) for any purpose. This starkly different

material is simply not the same as now claimed, contrary to the position set forth by the Office. As such, the combination of references simply does not teach the same products as now claimed by Applicants. Since, again, Applicants have shown the differences between a 0.5:1 calcium silicate and those now claimed within their originally filed examples, the closest teaching Withiam III would supply in support of the Office's present position would still not meet the requirements of the instantly claimed invention. Reconsideration and withdrawal thereof of this improper basis of rejection are therefore respectfully requested.

The Office has further rejected Claims 1, 3, 4, 5, 6, and 8-11 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claim 1 of U.S. Patent 7,163,669 (Withiam I). Applicants disagree with the Office's position in this instance as such a claim is directed to a method of preparing a fluid-based cosmetic composition comprising the steps of a) providing calcium silicate in particulate form; b) mixing said particulate calcium silicate with a cyclic silicone to form a premix wherein said cyclic silicone is deposited on the aprticles of calcium silicate; and c) combining the premix of step "b" with a least one solvent and at least one of said cosmetic ingredients... In essence, the single claim of this patent is not directed to anything that would resemble a redundant patent claim to those currently pending. It is not understood how the Office posits that such a specific method of producing a cosmetic composition requiring mixing calcium silicate with a cyclic silicone for the ultimate deposition of such cyclic silicone on the calcium silicate surface would be the same in scope as the present claims. As such, it is Applicants collective opinion that no such double patenting exists and a Terminal Disclaimer would unfairly limit the patent rights sought in this situation.

Reconsideration and withdrawal of this improper rejection are therefore earnestly solicited.

The Office has also rejected Claims 1, 3, 4, 5, 6, and 8-11 under the same nonstatutory grounds of obviousness-type double patenting as being unpatentable over CLaim 14-21 of copending Application No. 10/185,673 (in essence, Withiam II). Applicants are more amenable to such a basis, although as this is a provisional rejection, submission of any Terminal Disclaimer will be made if and when the claims of either application are deemed allowable.

CONCLUSION

In view of the remarks supplied above, it is respectfully submitted that the present claims of this application are now in condition for allowance and that this case be passed on to issue.

Respectfully submitted,

/William S Parks/

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William S. Parks
Attorney for Applicants
Registration Number 37,528
Telephone: (901) 537-1085

Wyatt, Tarrant & Combs
1715 Aaron Brenner Drive
Suite 800
Memphis, Tennessee 38120-4367